IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11534 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DIPAKBHAI BHIKHABHAI PATIL

Versus

STATE OF GUJARAT

Appearance:

MR MAHESH BHAVSAR for Petitioner No. 1

MR RM CHAUHAN, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 03/09/2003

ORAL JUDGEMENT

1. By way of this Special Civil Application, the petitioner has challenged the order dated 20.3.2003 passed by the Police Commissioner, City of Ahmedabad, against him, in exercise of powers under Section 3(1) of

the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "PASA Act") declaring the petitioner to be a "bootlegger" within the meaning of the PASA Act, and directing the detention of the petitioner. In pursuance of the said impugned order in this petition, the petitioner is detained in jail since 20.3.2003.

2. The grounds of detention served upon the petitioner and placed on record reveals that the detaining authority took into consideration two aspects of the matter, firstly, the crime registered against the petitioner on 10.3.2003 under the Bombay Prohibition Act, wherein foreign liquor amounting to Rs.19,31,176/- was seized from the petitioner including a car and mobile phone, and secondly, the detaining authority placed reliance on in-camera statement of witness recorded by proposing authority on 14.3.2003 and verified by the detaining authority on 17.3.2003 revealing incidents of 15.2.2003 and 23.2.2002, wherein one of the witness stated that witness noticed the activities of the petitioner, was threatened and beaten by the petitioner on suspicion that the witness was informing the police. The crowd was gathered. The said crowd was also threatened by the petitioner and his accomplices who were lashed with weapons. Due to which, the public order was disrupted and traffic was blocked. In the second incident on 23.2.2003, the witness has stated that the petitioner demanded his vehicle for the transportation of illegal liquor and on refusal he was beaten and like earlier incident when crowd was gathered, the same was dispersed by force by the petitioner and his accomplices. From the above, the detaining authority reached to the subjective satisfaction for passing the impugned order.

3. Learned Advocate Mr.Mahesh Bhavsar, for the petitioner and learned AGP. R.M. Chauhan were heard at length. Learned AGP placed on record an affidavit-in-reply of the detaining authority which is also taken into consideration. Learned Advocate for the petitioner makes a statement that the detenu has not filed any bail application in the crime in which the detenu is in judicial custody. The statement is recorded.

4. Though various contentions raised on behalf of the petitioner, and controverted by the AGP, the grounds on which the discussion is required is in respect of non-application of mind by the detaining authority as to vital aspect of the matter. Learned AGP after relying upon two decisions of the Apex Court in the matter of

MEENA JAYENDRA THAKUR vs. UNION OF INDIA AND OTHERS, reported in (1999) 8 SCC 177 and in the matter of AHAMED NASSAR vs. STATE OF TAMIL NADU, reported in (1999) 8 SCC 473, contended that in the said cases, it was held that the detaining authority applied its mind to the aspect as to the likelihood of the said petitioner to be released on bail. Adverting to the facts of this case, the grounds reveal that when detention order came to be passed and served upon the petitioner, the petitioner was on police remand in the crime registered against him. The detaining authority came to the conclusion that on remand period being over, the petitioner was likely to file bail application and was likely to be released on bail and on releasing the petitioner, the petitioner was likely to continue the illegal activities of selling liquor. The facts of this case are squarely covered by a decision of the Apex Court in the matter of AMRUTLAL vs. UNION OF INDIA, reported in AIR 2000 SC 3675, wherein the Supreme Court ruled that to arrive at a decision that the petitioner was likely to be released on bail, the detaining authority must rely upon the cogent material. On going through the record, it clearly appears that the detaining authority to come to a conclusion that on remand period being over, the petitioner was likely to be released on bail, relied upon no material at all and, therefore, the order impugned in question is vitiated by non-application of mind towards vitally important aspect of the matter. The order impugned therefore is required to be quashed and set aside on this ground alone. The other grounds urged on behalf of petitioner finds no merit at all.

5. In the result, this Special Civil Application is allowed with no order as to costs. The order impugned in this Special Civil Application passed by the Police Commissioner, Ahmedabad City, on 20.3.2003 under Section 3(1) of the PASA Act against the petitioner is quashed and set aside. Petitioner is directed to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute.

(J.R. Vora, J.)

p.n.nair